

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal No. 18-292
	)	
ROBERT BOWERS	)	

**NOTICE OF WAIVER OF APPEARANCE AT  
SCHEDULED SUPPRESSION HEARING**

Defendant Robert Bowers, through counsel, provides notice to the Court of his waiver of appearance at the October 12 and 13, 2021 suppression hearing.<sup>1</sup>

While Rule 43 of the Federal Rules of Criminal Procedure establishes a right, which can also be construed as a requirement, to be present at every trial stage and certain pretrial proceedings, that right or requirement does not extend to pretrial suppression hearings. Rule 43 provides that a “defendant must be present at: (1) the initial appearance, the initial arraignment, and the plea; (2) every trial stage, including jury impanelment and the return of the verdict; and (3) sentencing.” Fed. R. Crim. P. 43(a). Rule 43 does not apply to a pretrial suppression hearing. *Government of the Virgin Islands v. George*, 680 F.2d 13 (3d Cir. 1982) (“Because we hold that a trial ‘commences’ for Rule 43 purposes (as distinguished from double jeopardy purposes) when jury selection begins, not when the first juror or witness is sworn, we find no error by the district court in proceeding with the trial in George’s absence.”); *United States v.*

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<sup>1</sup> Counsel have confirmed this waiver with Mr. Bowers.

*Burke*, 345 F.3d 416, 423-24 (6th Cir. 2003) (noting “the authorities are nearly unanimous that Rule 43’s right to be present does not apply to pre-trial suppression hearings”).

### **CONCLUSION**

Defendant Robert Bowers, through counsel, provides notice of his waiver of his presence at the suppression hearing scheduled for October 12 and 13, 2021.

Respectfully submitted,

/s/ Judy Clarke

Judy Clarke

Clarke Johnston Thorp & Rice, PC

/s/ Michael N. Burt

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